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HOUSE BILL 305

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Jason C. Harper and Joshua N. Hernandez

AN ACT

RELATING TO BEHAVIORAL HEALTH; REQUIRING THE HUMAN SERVICES DEPARTMENT TO CONTRACT FOR SERVICES TO ASSIST JUVENILE OFFENDERS DEEMED INCOMPETENT TO STAND TRIAL; ALLOWING JUVENILE TREATMENT IN CERTAIN CIRCUMSTANCES; REPEALING CONFLICTING SECTIONS OF LAW BY REPEALING LAWS 2019, CHAPTER 211, SECTION 1.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 9-8-7.1 NMSA 1978 (being Laws 2007, Chapter 325, Section 4, as amended by Laws 2019, Chapter 211, Section 1 and by Laws 2019, Chapter 222, Section 1) is amended to read:

"9-8-7.1. BEHAVIORAL HEALTH SERVICES DIVISION--POWERS AND DUTIES OF THE HUMAN SERVICES DEPARTMENT.--Subject to appropriation, the department shall:

A. contract for behavioral health treatment and

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1 support services, including mental health, alcoholism and other
2 substance abuse services, and residential treatment and
3 habilitation services, including services for treatment for
4 minors deemed incompetent to stand trial in a criminal case
5 pursuant to Subsection E of Section 32A-2-21 NMSA 1978;

6 B. establish standards for the delivery of
7 behavioral health services, including quality management and
8 improvement, performance measures, accessibility and
9 availability of services, utilization management, credentialing
10 and recredentialing, rights and responsibilities of providers,
11 preventive behavioral health services, clinical treatment and
12 evaluation and the documentation and confidentiality of client
13 records;

14 C. ensure that all behavioral health services,
15 including mental health and substance abuse services, that are
16 provided, contracted for or approved are in compliance with the
17 requirements of Section 9-7-6.4 NMSA 1978;

18 D. assume responsibility for and implement adult
19 mental health and substance abuse services in the state and
20 provide residential treatment and habilitation services,
21 including services to assist juveniles deemed incompetent to
22 stand trial in a criminal case pursuant to Subsection E of
23 Section 32A-2-21 NMSA 1978 in coordination with the children,
24 youth and families department;

25 E. create, implement and continually evaluate the

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1 effectiveness of a framework for targeted, individualized
2 interventions for individuals who are incarcerated in a county
3 or municipal correctional facility and adult and juvenile
4 offenders who have behavioral health diagnoses, which framework
5 shall address those persons' behavioral health needs while they
6 are incarcerated and connect them to resources and services
7 immediately upon release;

8 F. establish criteria for determining individual
9 eligibility for behavioral health services; and

10 G. maintain a management information system in
11 accordance with standards for reporting clinical and fiscal
12 information."

13 SECTION 2. Section 32A-2-3 NMSA 1978 (being Laws 1993,
14 Chapter 77, Section 32, as amended) is amended to read:

15 "32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

16 A. "delinquent act" means an act committed by a
17 child that would be designated as a crime under the law if
18 committed by an adult, not including a violation of Section
19 30-9-2 NMSA 1978, including the following offenses:

20 (1) any of the following offenses pursuant to
21 municipal traffic codes or the Motor Vehicle Code:

22 (a) driving while under the influence of
23 intoxicating liquor or drugs;

24 (b) failure to stop in the event of an
25 accident causing death, personal injury or damage to property;

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- 1 (c) unlawful taking of a vehicle or
2 motor vehicle;
- 3 (d) receiving or transferring of a
4 stolen vehicle or motor vehicle;
- 5 (e) homicide by vehicle;
- 6 (f) injuring or tampering with a
7 vehicle;
- 8 (g) altering or changing of an engine
9 number or other vehicle identification numbers;
- 10 (h) altering or forging of a driver's
11 license or permit or any making of a fictitious license or
12 permit;
- 13 (i) reckless driving;
- 14 (j) driving with a suspended or revoked
15 license; or
- 16 (k) an offense punishable as a felony;
- 17 (2) buying, attempting to buy, receiving,
18 possessing or being served any alcoholic liquor or being
19 present in a licensed liquor establishment, other than a
20 restaurant or a licensed retail liquor establishment, except in
21 the presence of the child's parent, guardian, custodian or
22 adult spouse. As used in this paragraph, "restaurant" means an
23 establishment where meals are prepared and served primarily for
24 on-premises consumption and that has a dining room, a kitchen
25 and the employees necessary for preparing, cooking and serving

1 meals. "Restaurant" does not include an establishment, as
2 defined in regulations promulgated by the director of the
3 special investigations unit of the department of public safety,
4 that serves only hamburgers, sandwiches, salads and other fast
5 foods;

6 (3) a violation of Section 30-29-2 NMSA 1978,
7 regarding the illegal use of a glue, aerosol spray product or
8 other chemical substance;

9 (4) a violation of the Controlled Substances
10 Act;

11 (5) escape from the custody of a law
12 enforcement officer or a juvenile probation or parole officer
13 or from any placement made by the department by a child who has
14 been adjudicated a delinquent child;

15 (6) a violation of Section 30-15-1.1 NMSA 1978
16 regarding unauthorized graffiti on personal or real property;
17 or

18 (7) a violation of an order of protection
19 issued pursuant to the provisions of the Family Violence
20 Protection Act;

21 B. "delinquent child" means a child who has
22 committed a delinquent act;

23 C. "delinquent offender" means a delinquent child
24 who is subject to juvenile sanctions only and who is not a
25 youthful offender or a serious youthful offender;

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1 D. "detention facility" means a place where a child
2 may be detained under the Children's Code pending court hearing
3 and does not include a facility for the care and rehabilitation
4 of an adjudicated delinquent child;

5 E. "felony" means an act that would be a felony if
6 committed by an adult;

7 F. "likelihood of serious harm to self or others"
8 means that it is more likely than not that in the near future
9 the child will inflict serious bodily harm on the child's self
10 or another person or commit a criminal sexual offense, as
11 evidenced by behavior causing, attempting or threatening such
12 harm, which behavior gives rise to a reasonable fear of such
13 harm;

14 ~~[F.]~~ G. "misdemeanor" means an act that would be a
15 misdemeanor or petty misdemeanor if committed by an adult;

16 ~~[G.]~~ H. "restitution" means financial reimbursement
17 by the child to the victim or community service imposed by the
18 court and is limited to easily ascertainable damages for injury
19 to or loss of property, actual expenses incurred for medical,
20 psychiatric and psychological treatment for injury to a person
21 and lost wages resulting from physical injury, which are a
22 direct and proximate result of a delinquent act. "Restitution"
23 does not include reimbursement for damages for mental anguish,
24 pain and suffering or other intangible losses. As used in this
25 subsection, "victim" means a person who is injured or suffers

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1 damage of any kind by an act that is the subject of a complaint
2 or referral to law enforcement officers or juvenile probation
3 authorities. Nothing contained in this definition limits or
4 replaces the provisions of Subsections A and B of Section
5 32A-2-27 NMSA 1978;

6 ~~[H.]~~ I. "serious youthful offender" means an
7 individual fifteen to eighteen years of age who is charged with
8 and indicted or bound over for trial for first degree murder.
9 A "serious youthful offender" is not a delinquent child as
10 defined pursuant to the provisions of this section;

11 ~~[I.]~~ J. "supervised release" means the release of a
12 juvenile, whose term of commitment has not expired, from a
13 facility for the care and rehabilitation of adjudicated
14 delinquent children, with specified conditions to protect
15 public safety and promote successful transition and
16 reintegration into the community. A juvenile on supervised
17 release is subject to monitoring by the department until the
18 term of commitment has expired and may be returned to custody
19 for violating conditions of release; and

20 ~~[J.]~~ K. "youthful offender" means a delinquent
21 child subject to adult or juvenile sanctions who is:

22 (1) fourteen to eighteen years of age at the
23 time of the offense and who is adjudicated for at least one of
24 the following offenses:

25 (a) second degree murder, as provided in

1 Section 30-2-1 NMSA 1978;

2 (b) assault with intent to commit a
3 violent felony, as provided in Section 30-3-3 NMSA 1978;

4 (c) kidnapping, as provided in Section
5 30-4-1 NMSA 1978;

6 (d) aggravated battery, as provided in
7 Subsection C of Section 30-3-5 NMSA 1978;

8 (e) aggravated battery against a
9 household member, as provided in Subsection C of Section
10 30-3-16 NMSA 1978;

11 (f) aggravated battery upon a peace
12 officer, as provided in Subsection C of Section 30-22-25 NMSA
13 1978;

14 (g) shooting at a dwelling or occupied
15 building or shooting at or from a motor vehicle, as provided in
16 Section 30-3-8 NMSA 1978;

17 (h) dangerous use of explosives, as
18 provided in Section 30-7-5 NMSA 1978;

19 (i) criminal sexual penetration, as
20 provided in Section 30-9-11 NMSA 1978;

21 (j) robbery, as provided in Section
22 30-16-2 NMSA 1978;

23 (k) aggravated burglary, as provided in
24 Section 30-16-4 NMSA 1978;

25 (l) aggravated arson, as provided in

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1 Section 30-17-6 NMSA 1978; or

2 (m) abuse of a child that results in
3 great bodily harm or death to the child, as provided in Section
4 30-6-1 NMSA 1978;

5 (2) fourteen to eighteen years of age at the
6 time of the offense, who is adjudicated for any felony offense
7 and who has had three prior, separate felony adjudications
8 within a three-year time period immediately preceding the
9 instant offense. The felony adjudications relied upon as prior
10 adjudications shall not have arisen out of the same transaction
11 or occurrence or series of events related in time and location.
12 Successful completion of consent decrees is not considered a
13 prior adjudication for the purposes of this paragraph; or

14 (3) fourteen years of age and who is
15 adjudicated for first degree murder, as provided in Section
16 30-2-1 NMSA 1978."

17 SECTION 3. Section 32A-2-21 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 50, as amended) is amended to read:

19 "32A-2-21. DISPOSITION OF A CHILD WITH A MENTAL DISORDER
20 OR DEVELOPMENTAL DISABILITY IN A DELINQUENCY PROCEEDING.--

21 A. If in a hearing at any stage of a proceeding on
22 a delinquency petition the evidence indicates that the child
23 has or may have a mental disorder or developmental disability,
24 the court may:

25 (1) order the child detained if appropriate

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1 under the criteria established pursuant to the provisions of
2 the Delinquency Act; and

3 (2) initiate proceedings for the involuntary
4 placement of the child as a minor with a mental disorder or
5 developmental disability pursuant to the provisions of the
6 Children's Mental Health and Developmental Disabilities Act.

7 B. If the child is placed for residential treatment
8 or habilitation pursuant to the Children's Mental Health and
9 Developmental Disabilities Act, the department shall retain
10 legal custody during the period of involuntary placement or
11 until further order of the court.

12 C. If a child is committed to a psychiatric
13 hospital for treatment or habilitation and in the event that
14 the department should be required to pay more than four hundred
15 dollars (\$400) per day because of the individualized treatment
16 plan, the annual costs over four hundred dollars (\$400) per
17 child per day will be reported annually by the department to
18 the legislative finance committee.

19 D. The child may remain in the residential
20 treatment or habilitation facility pending the disposition of
21 the delinquency petition.

22 E. The child shall remain in the residential
23 treatment or habilitation facility until the child reaches the
24 age of majority or until the child is treated to attain
25 competency to stand trial in a criminal case if:

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1 (1) the child has been charged with a felony
2 offense; and

3 (2) the child has been deemed incompetent to
4 stand trial in a criminal case; or

5 (3) there is evidence that the child poses a
6 likelihood of serious harm to the child's self or others.

7 ~~[E.]~~ F. When a child in departmental custody needs
8 involuntary placement for residential mental health or
9 developmental disability services as a result of a mental
10 disorder or developmental disability, the department shall
11 request the children's court attorney to petition for that
12 child's placement pursuant to the provisions of the Children's
13 Mental Health and Developmental Disabilities Act.

14 ~~[F.]~~ G. A child subject to the provisions of the
15 Delinquency Act who receives treatment in a residential
16 treatment or habilitation program shall enjoy all the
17 substantive and procedural rights set forth in the Children's
18 Mental Health and Developmental Disabilities Act.

19 ~~[G.]~~ H. A child's competency to stand trial or
20 participate in ~~[his]~~ the child's own defense may be raised by a
21 party at any time during a proceeding. If the child has been
22 accused of an act that would be considered a misdemeanor if the
23 child were an adult and the child is found to be incompetent to
24 stand trial, the court shall dismiss the petition with
25 prejudice and may recommend that the children's court attorney

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1 initiate proceedings pursuant to the provisions of the
2 Children's Mental Health and Developmental Disabilities Act.
3 In all other cases, the court shall stay the proceedings until
4 the child is competent to stand trial; provided that a petition
5 shall not be stayed for more than one year unless the child is
6 being treated pursuant to Subsection E of this section. The
7 court may order treatment to enable the child to attain
8 competency to stand trial and may amend the conditions of
9 release pursuant to Sections 32A-2-11 and 32A-2-13 NMSA 1978.
10 The child's competency to stand trial shall be reviewed every
11 ninety days for up to one year and every six months for a child
12 being treated pursuant to Subsection E of this section. Except
13 as provided in Subsection E of this section, the court shall
14 dismiss the petition without prejudice if, at any time during
15 the year, the court finds that a child cannot be treated to
16 competency or if, after one year, the court determines that a
17 child is incompetent to stand trial or participate in ~~[his]~~ the
18 child's own defense. Upon dismissal, the court may recommend
19 that the children's court attorney initiate proceedings
20 pursuant to the provisions of the Children's Mental Health and
21 Developmental Disabilities Act.

22 ~~[H.]~~ I. Involuntary residential treatment shall
23 only occur pursuant to the provisions of the Children's Mental
24 Health and Developmental Disabilities Act."

25 SECTION 4. Section 32A-6A-4 NMSA 1978 (being Laws 2007,

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1 Chapter 162, Section 4, as amended) is amended to read:

2 "32A-6A-4. DEFINITIONS.--As used in the Children's Mental
3 Health and Developmental Disabilities Act:

4 A. "aversive intervention" means any device or
5 intervention, consequences or procedure intended to cause pain
6 or unpleasant sensations, including interventions causing
7 physical pain, tissue damage, physical illness or injury;
8 electric shock; isolation; forced exercise; withholding of
9 food, water or sleep; humiliation; water mist; noxious taste,
10 smell or skin agents; and over-correction;

11 B. "behavioral health services" means a
12 comprehensive array of professional and ancillary services for
13 the treatment, habilitation, prevention and identification of
14 mental illnesses, behavioral symptoms associated with
15 developmental disabilities, substance abuse disorders and
16 trauma spectrum disorders;

17 C. "capacity" means a child's ability to:

18 (1) understand and appreciate the nature and
19 consequences of proposed health care, including its significant
20 benefits, risks and alternatives to proposed health care; and

21 (2) make and communicate an informed health
22 care decision;

23 D. "chemical restraint" means a medication that is
24 not standard treatment for the patient's medical or psychiatric
25 condition that is used to control behavior or to restrict a

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1 patient's freedom of movement;

2 E. "child" means a person who is a minor;

3 F. "clinician" means a person whose licensure
4 allows the person to make independent clinical decisions,
5 including a physician, licensed psychologist, psychiatric nurse
6 practitioner, licensed independent social worker, licensed
7 marriage and family therapist and licensed professional
8 clinical counselor;

9 G. "continuum of services" means a comprehensive
10 array of emergency, outpatient, intermediate and inpatient
11 services and care, including screening, early identification,
12 diagnostic evaluation, medical, psychiatric, psychological and
13 social service care, habilitation, education, training,
14 vocational rehabilitation and career counseling;

15 H. "developmental disability" means a severe
16 chronic disability that:

17 (1) is attributable to a mental or physical
18 impairment or a combination of mental or physical impairments;

19 (2) is manifested before a person reaches
20 twenty-two years of age;

21 (3) is expected to continue indefinitely;

22 (4) results in substantial functional
23 limitations in three or more of the following areas of major
24 life activities:

25 (a) self-care;

- 1 (b) receptive and expressive language;
- 2 (c) learning;
- 3 (d) mobility;
- 4 (e) self-direction;
- 5 (f) capacity for independent living; or
- 6 (g) economic self-sufficiency; and

7 (5) reflects a person's need for a combination
8 and sequence of special, interdisciplinary or other supports
9 and services that are of lifelong or extended duration that are
10 individually planned or coordinated;

11 I. "evaluation facility" means a community mental
12 health or developmental disability program, a medical facility
13 having psychiatric or developmental disability services
14 available or, if none of the foregoing is reasonably available
15 or appropriate, the office of a licensed physician or a
16 licensed psychologist, any of which shall be capable of
17 performing a mental status examination adequate to determine
18 the need for appropriate treatment, including possible
19 involuntary treatment;

20 J. "family" means persons with a kinship
21 relationship to a child, including the relationship that exists
22 between a child and a biological or adoptive parent, relative
23 of the child, a step-parent, a godparent, a member of the
24 child's tribe or clan or an adult with whom the child has a
25 significant bond;

1 K. "habilitation" means services, including
2 behavioral health services based on evaluation of the child,
3 that are aimed at assisting the child to prevent, correct or
4 ameliorate a developmental disability. The purpose of
5 habilitation is to enable the child to attain, maintain or
6 regain maximum functioning or independence or to assist the
7 child pursuant to Subsection E of Section 32A-2-21 NMSA 1978.

8 "Habilitation" includes programs of formal, structured
9 education and treatment and rehabilitation services;

10 L. "individual instruction" means a child's
11 direction concerning a mental health treatment decision for the
12 child, made while the child has capacity and is fourteen years
13 of age or older, which is to be implemented when the child has
14 been determined to lack capacity;

15 M. "least restrictive means principle" means the
16 conditions of habilitation or treatment for the child,
17 separately and in combination that:

18 (1) are no more harsh, hazardous or intrusive
19 than necessary to achieve acceptable treatment objectives for
20 the child;

21 (2) involve no restrictions on physical
22 movement and no requirement for residential care, except as
23 reasonably necessary for the administration of treatment or for
24 the protection of the child or others from physical injury; and

25 (3) are conducted at the suitable available

1 facility closest to the child's place of residence;

2 N. "legal custodian" means a biological or adoptive
3 parent of a child unless legal custody has been vested in a
4 person, department or agency and also includes a person
5 appointed by an unexpired power of attorney;

6 O. "licensed psychologist" means a person who holds
7 a current license as a psychologist issued by the New Mexico
8 state board of psychologist examiners;

9 P. "likelihood of serious harm to self" means that
10 it is more likely than not that in the near future a child will
11 attempt to commit suicide or will cause serious bodily harm to
12 the child by violent or other self-destructive means, as
13 evidenced by behavior causing, attempting or threatening such
14 harm, which behavior gives rise to a reasonable fear of such
15 harm from the child;

16 Q. "likelihood of serious harm to others" means
17 that it is more likely than not that in the near future the
18 child will inflict serious bodily harm on another person or
19 commit a criminal sexual offense, as evidenced by behavior
20 causing, attempting or threatening such harm, which behavior
21 gives rise to a reasonable fear of such harm from the child;

22 R. "mechanical restraint" means any device or
23 material attached or adjacent to the child's body that
24 restricts freedom of movement or normal access to any portion
25 of the child's body and that the child cannot easily remove but

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1 does not include mechanical supports or protective devices;

2 S. "mechanical support" means a device used to
3 achieve proper body position, designed by a physical therapist
4 and approved by a physician or designed by an occupational
5 therapist, such as braces, standers or gait belts, but not
6 including protective devices;

7 T. "medically necessary services" means clinical
8 and rehabilitative physical, mental or behavioral health
9 services that are:

10 (1) essential to prevent, diagnose or treat
11 medical conditions or are essential to enable the child to
12 attain, maintain or regain functional capacity;

13 (2) delivered in the amount, duration, scope
14 and setting that is clinically appropriate to the specific
15 physical, mental and behavioral health care needs of the child;

16 (3) provided within professionally accepted
17 standards of practice and national guidelines; and

18 (4) required to meet the physical, mental and
19 behavioral health needs of the child and are not primarily for
20 the convenience of the child, provider or payer;

21 U. "mental disorder" means a substantial disorder
22 of the child's emotional processes, thought or cognition, not
23 including a developmental disability, that impairs the child's:

24 (1) functional ability to act in
25 developmentally and age-appropriate ways in any life domain;

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- 1 (2) judgment;
- 2 (3) behavior; and
- 3 (4) capacity to recognize reality;

4 V. "mental health or developmental disabilities
5 professional" means a person who by training or experience is
6 qualified to work with persons with mental disorders or
7 developmental disabilities;

8 W. "out-of-home treatment or habilitation program"
9 means an out-of-home residential program that provides twenty-
10 four-hour care and supervision to children with the primary
11 purpose of providing treatment or habilitation to children.

12 "Out-of-home treatment or habilitation program" includes [~~but~~
13 ~~is not limited to~~] treatment foster care, group homes,
14 psychiatric hospitals, psychiatric residential treatment
15 facilities and non-medical and community-based residential
16 treatment centers;

17 X. "parent" means a biological or adoptive parent
18 of a child whose parental rights have not been terminated;

19 Y. "physical restraint" means the use of physical
20 force without the use of any device or material that restricts
21 the free movement of all or a portion of a child's body;

22 Z. "protective devices" means helmets, safety
23 goggles or glasses, guards, mitts, gloves, pads and other
24 common safety devices that are normally used or recommended for
25 use by persons without disabilities while engaged in a sport or

1 occupation or during transportation;

2 AA. "residential treatment or habilitation program"
3 means diagnosis, evaluation, care, treatment or habilitation
4 rendered inside or on the premises of a mental health or
5 developmental disabilities facility, hospital, clinic,
6 institution, supervisory residence or nursing home when the
7 child resides on the premises and where one or more of the
8 following measures is available for use:

9 (1) a mechanical device to restrain or
10 restrict the child's movement;

11 (2) a secure seclusion area from which the
12 child is unable to exit voluntarily;

13 (3) a facility or program designed for the
14 purpose of restricting the child's ability to exit voluntarily;
15 and

16 (4) the involuntary emergency administration
17 of psychotropic medication;

18 BB. "restraint" means the use of a physical,
19 chemical or mechanical restraint;

20 CC. "seclusion" means the confinement of a child
21 alone in a room from which the child is physically prevented
22 from leaving;

23 DD. "treatment" means provision of behavioral
24 health services based on evaluation of the child, aimed at
25 assisting the child to prevent, correct or ameliorate a mental

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1 disorder. The purpose of treatment is to enable the child to
2 attain, maintain or regain maximum functioning;

3 EE. "treatment team" means a team consisting of the
4 child, the child's parents unless parental rights have
5 specifically been limited pursuant to an order of a court,
6 legal custodian, guardian ad litem, treatment guardian,
7 clinician and any other professionals involved in treatment of
8 the child, other members of the child's family, if requested by
9 the child, and the child's attorney if requested by the child,
10 unless in the professional judgment of the treating clinician
11 for reasons of safety or therapy one or more members should be
12 excluded from participation in the treatment team; and

13 FF. "treatment plan" means an individualized plan
14 developed by a treatment team based on assessed strengths and
15 needs of the child and family."

16 SECTION 5. Section 32A-6A-22 NMSA 1978 (being Laws 2007,
17 Chapter 162, Section 22) is amended to read:

18 "32A-6A-22. INVOLUNTARY RESIDENTIAL TREATMENT.--

19 A. A child may not receive treatment for mental
20 disorders or habilitation for developmental disabilities on an
21 involuntary residential basis except as provided in this
22 section.

23 B. A child afforded rights under the Children's
24 Mental Health and Developmental Disabilities Act shall be
25 advised of those rights at that child's first appearance before

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1 the court on a petition under that act.

2 C. A child has the right to be placed in a
3 residential treatment or habilitation program only when the
4 placement is medically necessary.

5 D. A person who believes that a child, as a result
6 of a mental disorder or developmental disability, is in need of
7 residential mental health or developmental disabilities
8 services may request that a children's court attorney file a
9 petition with the court for the child's involuntary placement.
10 The petition shall include a detailed description of the
11 symptoms or behaviors of the child that support the allegations
12 in the petition, a list of prospective witnesses for
13 involuntary placement and a summary of matters to which they
14 will testify. The petition should also contain a discussion of
15 the alternatives to residential care that have been considered
16 and the reasons for rejecting the alternatives. A copy of the
17 petition shall be served upon the child, the child's legal
18 custodian and the child's attorney or guardian ad litem.

19 E. The court shall, upon receiving the petition,
20 appoint counsel for the child unless the child has retained an
21 attorney or an attorney or guardian ad litem has been appointed
22 pursuant to the provisions of the Children's Mental Health and
23 Developmental Disabilities Act. The attorney or guardian ad
24 litem shall represent the child at all stages of the
25 proceedings.

1 F. If, after interviewing the child, the child's
2 attorney or guardian ad litem determines that the child
3 understands the child's rights and desires to waive the child's
4 presence at the hearing on the issue of involuntary placement,
5 the attorney or guardian ad litem shall submit a verified
6 written statement to the court explaining the attorney's or
7 guardian ad litem's understanding of the child's intent. If
8 the court is satisfied that the child has voluntarily and
9 knowingly waived the child's right to be present at the
10 hearing, the child may be involuntarily placed in a residential
11 treatment or habilitation program at a hearing at which the
12 child is not present. By waiving the right to be present at
13 the involuntary placement hearing, the child waives no other
14 rights.

15 G. An involuntary placement hearing shall be held
16 within seven days of the emergency admission of the child to a
17 residential treatment or habilitation program under this
18 section. An involuntary placement hearing shall be held within
19 five days from a child's declaration that the child desires to
20 terminate the child's voluntary admission to a residential
21 treatment or habilitation program if the child's clinician has
22 assessed and documented that involuntary placement is
23 necessary.

24 H. At the involuntary placement hearing, the child
25 shall:

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- 1 (1) at all times be represented by counsel;
2 (2) have the right to present evidence,
3 including the testimony of a mental health and developmental
4 disabilities professional of the child's own choosing;
5 (3) have the right to cross-examine witnesses;
6 (4) have the right to a complete record of the
7 proceedings; and
8 (5) have the right to an expeditious appeal of
9 an adverse ruling.

10 I. The legal custodian of a child involved in an
11 involuntary placement hearing shall have automatic standing as
12 witnesses and shall be allowed to testify by telephone or
13 through a written affidavit if circumstances make personal
14 testimony too burdensome.

15 J. The court shall include in its findings either a
16 statement of the child's legal custodian's opinion about
17 whether the child should be involuntarily placed in a
18 residential treatment or habilitation program, a statement
19 detailing the efforts made to ascertain the legal custodian's
20 opinion or a statement of why it was not in the child's best
21 interests to have the legal guardian involved.

22 K. The court shall make an order involuntarily
23 placing the child in a residential treatment or habilitation
24 program upon a showing by clear and convincing evidence that:

- 25 (1) as a result of mental disorder or

1 developmental disability the child needs the treatment or
2 habilitation services proposed;

3 (2) as a result of mental disorder or
4 developmental disability the child is likely to benefit from
5 the treatment or habilitation services proposed or there is
6 evidence that the child poses a likelihood of serious harm to
7 the child's self or to others;

8 (3) the proposed involuntary placement is
9 consistent with the treatment or habilitation needs of the
10 child; and

11 (4) the proposed involuntary placement is
12 consistent with the least restrictive means principle.

13 L. If the court determines that the child does not
14 meet the criteria for involuntary placement set forth in this
15 section, it may order the child to undergo nonresidential
16 treatment or habilitation as may be appropriate and necessary
17 or it may order no treatment. If the court determines that the
18 child should not be involuntarily placed in a residential
19 treatment or habilitation program and if the child's legal
20 custodian refuses to take custody of the child, the court shall
21 refer the case to the department for an abuse and neglect
22 investigation. The department may take the child into custody
23 pursuant to the provisions of the Abuse and Neglect Act or the
24 Family in Need of Court-Ordered Services Act.

25 M. A child receiving involuntary residential

underscoring material = new
~~[bracketed material] = delete~~

1 treatment or habilitation services for a mental disorder or
2 developmental disability under this section shall have a right
3 to periodic review of the child's involuntary placement at the
4 end of every involuntary placement period. An involuntary
5 placement period shall not exceed sixty days. At the
6 expiration of an involuntary placement period, the child may
7 continue in residential care only after a new involuntary
8 placement hearing and entry of a new order of involuntary
9 placement for one involuntary placement period. Nothing set
10 forth in the Children's Mental Health and Developmental
11 Disabilities Act prohibits a child, who has been involuntarily
12 placed and thereafter discharged and released, from
13 subsequently voluntarily consenting to admission under the
14 provisions of that act.

15 N. If the person seeking the involuntary placement
16 of a child to a residential treatment or habilitation program
17 believes that the child is likely to cause serious bodily harm
18 to self or to others during the period that would be required
19 to hold an involuntary placement hearing as provided in this
20 section, the child may be admitted to residential care on an
21 emergency basis. If the child is admitted on an emergency
22 basis, appointment of counsel and other procedures shall then
23 take place as provided elsewhere in this section."

24 SECTION 6. REPEAL.--Laws 2019, Chapter 211, Section 1 is
25 repealed.

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